

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No. 2012/2024.
Date of institution 08.08.2024.
Date of decision 11.10.2024.

1. Mumtaz Naz S/o Sultan Muhammad R/o Mohalla Zargaran Dhangroot District Kotli, Azad Jammu and Kashmir.
2. Muhammad Anees Butt S/o Muhammad Akram Butt R/o Mohalla Pang Peeran District Kotli, Azad Jammu and Kashmir.

.....Petitioners

VERSUS

1. Azad Government of the State of Jammu and Kashmir through Chief Secretary having his office at New Secretariat Muzaffarabad, Azad Kashmir.
2. Home Secretary, Azad Government of the State of Jammu and Kashmir, having his office at New Secretariat Muzaffarabad.
3. Kashmir Council, through Secretary Kashmir Council having his office at Islamabad Pakistan.
4. Legislative Assembly of Azad Jammu and Kashmir through Speaker, having his office at New Secretariat Muzaffarabad.
5. Secretary Legislative Assembly of Azad Jammu and Kashmir, having his office at New Secretariat Muzaffarabad.
6. Azad Jammu and Kashmir Police Department, through Inspector General Police, Azad Jammu and Kashmir, Muzaffarabad, Azad Kashmir.
7. Senior Superintendent Police, District Kotli, Azad Jammu and Kashmir.
8. District Magistrate Kotli, Azad Jammu and Kashmir.
9. Station House Officer (SHO), Police Station Kotli Azad Kashmir.
10. Station House Officer CIA Kotli, Azad Jammu & Kashmir.
11. Station House Officer (SHO), Police Station Kot Sultan, District Layyah, Pakistan.
12. Syed Kamran Ali Hajveri S/o Mumtaz Ali R/o Darbar Hazrat Syed Baba Shah Jamal Lahore, Pakistan.

....Respondents

WRIT PETITION

Before:- *Justice Syed Shahid Bahar, J.*

PRESENT:

Mr. Kashif Azad, Advocate for the petitioners.

M/s Mr. Javed Anwar Janjua, Advoate, Zaman Ali Dogar, Sardar Farhat Manzoor Khan Chandio, Ch. Zulfiqar Nadeem, Khalid Bashir Mughal and Haroon Zahid Dogar, Advocates for respondent No.12.

Judgment:-

Through the titled writ petition filed under Article 44 of Azad Jammu and Kashmir Interim Constitution, 1974, the petitioners beseeched following relief:-

“It is, therefore, most humbly prayed by accepting the instant writ petition, the non-petitioners may very graciously be restrained from arresting or transferring the petitioners to Pakistan in garb of the FIR No.196/2024 under sections 406 and 506 TP dated 04.04.2024, without adopting procedure provided in Azad Jammu and Kashmir Council extradition of fugitive offender Act, 1984 and 1995. It is further prayed that Sections 3 to 6 of Azad Jammu and Kashmir Council Extradition of Fugitive Offender Act, 1984 and 1995 may very kindly be declared void, non-reciprocal, against the basic and fundamental rights of the petitioner. It is further requested that sections of Azad Jammu and Kashmir Council Extradition of Fugitive Offender Act, may kindly be struck down. Any other relief admissible under law may also be granted in the interest of justice.”

2. Facts of the case as per petitioners briefly stated are that SHO, Police Station Kot Sultan, District Liyyah, Pakistan got registered a false and concocted FIR vide No.196/2024, under sections 406 & 506 PPC/ (TP) with connivance of complainant and with the help of the respondents, while the petitioners have not committed any offence as alleged in the FIR. The petitioners contended that the respondents are hatching conspiracy and want to arrest and transfer the petitioners on pretext of Azad Jammu and Kashmir Council Extradition of Fugitive Offender Act, 1984 as well as Extradition of Fugitive Offender Act, 1995. Petitioners alleged that the sections 3, 4, 5 and 6 of the aforesaid

Act are against the basic and fundamental rights of petitioners as well as other state subjects, thus, the same are not sustainable and liable to be struck down because, stated provisions are discriminatory, against the Interim Constitution, 1974 being not reciprocal, therefore, liable to be declared against basic and fundamental rights of the petitioners as well as other state subjects. The petitioners averred that act of respondents regarding arrest and transfer to Pakistan is based on malafide intentions just to deprive the petitioners from basic and fundamental rights, protected by the Constitution, therefore, respondents are liable to be discouraged and restrained from arresting the petitioners and thereafter transferring to Pakistan without adopting relevant law.

3. Comments have been filed on behalf of respondent No.11 (SHO, Police Station Kot Sultan), wherein he refuted the claim of the petitioner and contended that the FIR has been registered against the petitioners alongwith other co-accused quite in accordance with law. Investigation in the matter is initiated and statements of the witnesses under Section 161, Cr.P.C have also been recorded. To arrest the accused, warrant of arrest has been obtained from District Magistrate concerned; all legal process to arrest the accused/petitioners has been adopted. He contended that on 02.08.2024 a letter was issued by the Home Department Azad Jammu and Kashmir to District Magistrate Kotli who gave permission and all the documents have been showed to Superintendent of Police, Kotli regarding permission to arrest the accused/petitioners. He finally averred that all the legal process regarding arrest of the accused/petitioners has been completed.

4. Preliminary arguments heard. Record appended with the writ petition has been perused and I have also gone through the law on the subject with due care.

5. The claim of the petitioners is that the respondents may be restrained from arresting or transferring the petitioners to Pakistan in garb of FIR No.196/2024, without adopting procedure provided in Azad Jammu and Kashmir Council Extradition of Fugitive offender Act, 1984 and 1995. They prayed that Sections 3 to 6 of Azad Jammu and Kashmir Council Extradition of Fugitive Offender Act, 1984 and 1985 may very kindly be declared void, non-reciprocal, against basic and fundamental rights of the petitioners.

6. In such like matter the law is very clear. It is important to reproduce the relevant sections of Azad Jammu and Kashmir Council Extradition of Fugitive Offenders Act, 1984.

3. **Warrant of arrest:-** When any police officer of Pakistan comes to Azad Jammu and Kashmir the Police of Azad Jammu and Kashmir shall provide full assistance and active cooperation to such police officer for the arrest of such fugitive offender.

4.

5. **Application for transfer of fugitive offender to Pakistan.-**

Upon the arrest of a fugitive offender under section 3, an application shall be made to the District magistrate in whose District the arrest has been made for the transfer of such offender and the property seized under section 4 and the District Magistrate shall, upon such application, order the transfer of such offender and property to the concerned police officer of Pakistan.

7. Moreover, in the Azad Jammu and Kashmir Council Extradition of Fugitive Offenders Ordinance, 1995, the proper method to arrest and transfer of the offender/accused has been described. The relevant sections are as under:-

“(3) **Warrant of arrest**:- When any police officer of Pakistan comes to Azad Jammu & Kashmir with a warrant for the arrest of a fugitive of offender who is suspected to be for the time being residing in Azad Jammu and Kashmir the Police of Azad Jammu and Kashmir shall provide full assistance and active cooperation to such police officer for the arrest of such fugitive offender.

(4)

(5) **Application for transfer of fugitive offender to Pakistan**. Upon the arrest of a fugitive offender under section 3, an application shall be made to the District Magistrate in whose District the arrest has been made for the transfer of such offender and the property seized under section 4, and the District Magistrate shall, upon such application, order the transfer of such offender and property to the concerned police officer of Pakistan.”

.....”

8. The learned counsel for the petitioners raised a point that Sections 3 to 6 of the Azad Jammu and Kashmir Council Extradition Act 1984 are contrary to the relevant provision of the constitution 1974, whereas, act of respondents is against the basic and fundamental rights protected by the constitution, 1974, hence, the same may be set-aside. In this regard, it may be mentioned here that this Court in a division bench case titled **“Aqeel-ur-Rehman Vs. Azad Govt. and others”** decided on 03.10.2019, held as under:-

“5. So far as validity of provisions of Extradition of Fugitive Offender Ordinance is concerned, this Court has already dismissed a case titled “Hassan Raza Vs Azad Govt. and others” on 30.09.2019. The Interim Constitution 1974 undoubtedly guarantees free movement of a State Subject within the territory of Azad Jammu and Kashmir but it is subject to restriction by any law for the time being enforce. State Subjects of Azad of Jammu and Kashmir are free to move to Pakistan and citizen of Pakistan are also allowed to enter in the territory of Azad Kashmir without any visa restriction. If the impugned ordinance 1995 is declared as invalid at the wish of a culprit, it would tantamount to declare the State territory as a safe haven for the culprits. There should be a mechanism for arrest of an accused person who is alleged to have committed a crime in Pakistan and the impugned Ordinance 1995 has been envisages for the same purpose. Free movement of a State Subject does not mean that an accused alleged to have committed an offence in Pakistan cannot be arrested by any means. The legislature validly envisaged the impugned Ordinance which authorizes a police officer from Pakistan to arrest an accused in Azad Kashmir. However, a further procedure has been devised for handing over such accused to Pakistan Police. The impugned law cannot be considered as against the provisions of constitution merely for the reasons that it is not reciprocal, as it does not provide a method for arrest of Pakistani citizen who is alleged to have committed a crime in Azad Kashmir. No violation of fundamental rights of the State Subject is found in the instant case, so, the instant writ petition is not maintainable. It may be added here that a fugitive of law has no right to claim protection from arrest and law cannot be declared as unconstitutional just to benefit an accused.”

9. In another case referred to and relied upon by the learned counsel for the petitioners titled “*Lt. Col. Sanaullah Raja vs. Muhammad Shafi and 2 others*” reported as **1997 S.C.R 149**, the Hon’ble Apex Court of Azad Jammu and Kashmir held as under:-

“After the arrest of the accused-respondent, it was obligatory on the District Magistrate under Section 5 of the Ordinance known as Azad Jammu and Kashmir Extradition of Fugitive Offenders Ordinance, 1995 and section 5 of the Act known as Azad Jammu and Kashmir Extradition of Fugitive Offenders Act, 1984, to hand over the accused-respondent to Anti-Narcotics Force, Rawalpindi, instead of making a reference to the High Court/Shariat Court.”

10. While in the instant case an FIR No.196/2024 was registered against the petitioners, herein, and other co-accused under Sections 406 and 506, PPC at Police Station Kot Sultan, District Layyah Pakistan, on the complaint of Pir Syed Kamran Ali Hijveri (respondent No.12, herein). Allegation of embezzlement of amount of Rs.90 Lac has been levelled against the petitioners and other co-accused by the complainant. The concerned police are investigating the matter and accused-petitioners, herein, have also been nominated in the alleged FIR, who are hiding themselves from the police and moved this petition. Comments have been filed on behalf of concerned SHO/SI Police Station Kot Sultan, wherein he stated as under:-

”تفتیش مقدمہ عمل میں لائی گئی ہے۔ گواہان کے بیانات زبردفعہ 161 ض ف تحریر کیئے گئے ہیں۔ ملزمان کی گرفتاری کیلئے علاقہ مجسٹریٹ صاحب کی عدالت سے مورخہ 27-7-2024 کو وارنٹ گرفتاری حاصل کیئے گئے ہیں۔ الزام علیہ نمبر 3، 6، آزاد کشمیر ضلع کوٹلی کے رہائشی ہیں جن کی گرفتاری اور ٹرانسفر کیلئے قانون کے مطابق پراسس کیا گیا۔

ہوم ڈیپارٹمنٹ گورنمنٹ آف پنجاب سے لیٹر نمبری 7597/L-11242-TA/24 تاریخ 31.07.2024 کو جاری کروا کے منسٹری آف انٹیریور گورنمنٹ آف پاکستان سے 31 جولائی کو ہوم سیکرٹری آزاد کشمیر کو لیٹر لکھوایا گیا۔

مورخہ 2-8-24 کو ہوم ڈیپارٹمنٹ سٹیٹ آف جموں اینڈ کشمیر سے ڈسٹرکٹ مجسٹریٹ کوٹلی آزاد جموں و کشمیر کوٹلی کو ہوم ڈیپارٹمنٹ آزاد جموں و کشمیر سے لیٹر جاری کریا گیا۔ آئندہ ڈسٹرکٹ کوٹلی آزاد جموں و کشمیر سے ملزمان کو گرفتار کرنے کی اجازت حاصل کی گئی۔ تمام ڈاکومنٹیشن SP کوٹلی کو دیکھانے کے بعد پیشتر ز جو کہ الزام علیہ نمبر 3، 6 ہیں ان کی گرفتاری کی اجازت حاصل کی گئی ہے۔“

11. Thus, in the above circumstances of the case, it can safely be held that the concerned respondents have adopted the due course of law and have not committed any violation of law and rules. Petitioners,

herein, have failed to point out any illegality or irregularity on the part of the respondents, thus, the request made by the petitioners through the instant petition is having without any substance is hereby rejected.

12. The case of the petitioners mainly hinges on mere apprehensions, all the apprehensions have evaporated by the comments filed by the police department.

13. Next prayer and ground of attack of the petitioner is against section 3 to 6 of the AJK Council Extradition of Fugitive Offenders Act, 1984 and 1995. But during the course of arguments, the petitioner has failed to point out the vires of above provisions of law, thus, in such eventuality all presumption are to be taken in a sense that law made by the legislature is intra vires rather contra. Trite that malafide cannot be attributed to the legislature, wisdom exposed by the legislature in the impugned law cannot be questioned at random, without establishing that said law is in opposition with the Constitution.

(Underlining is mine)

14. The petitioner has failed to make out a case for admission of the writ petition.

15. For the foregoing reasons there is no substance in the instant petition, and petition must therefore be dismissed. Constitutional petition fails at initial stage, dismissed in limine.

Note:- *[The above are the detailed reasons of my short order dated 12.09.2024.]*

Muzaffarabad,
11.10.2024.

JUDGE